IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Larri VERMOLA *et al.*	Confirmation No.:	4990
Application No.:	10/580,677	Examiner:	Kelley, Steven Shaun
Filed:	March 8, 2007	Group Art Unit:	2617

For: METHOD FOR DATA RECEPTION IN A MULTI-FUNCTION RECEIVING DEVICE

Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal dated March 7, 2011.

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APPENDIXES

I. REAL PARTY IN INTEREST

The real party in interest is Nokia Corporation, a corporation organized under the laws of Finland and having a place of business at Keilalahdentie 4, FIN-02150 Espoo, Finland. The above referenced patent application is assigned to Nokia Corporation.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF THE CLAIMS

Claims 18-21, 24, 25, 27-36, 38, 39, and 42-49 are pending in this appeal. Claims 1-17, 22, 23, 26, 37, 40, and 41 have earlier been canceled. No claim is allowed. This appeal is therefore taken from the final rejection of claims 18-21, 24, 25, 27-36, 38, 39, and 42-49 set forth in the final Office Action dated December 10, 2010.

IV. STATUS OF AMENDMENTS

Amendments to the claims were last submitted in a Response Under 37 CFR §1.111 filed on October 12, 2010, which were entered and considered. Thus, the status of the claims is as of that amendment which was entered by the Examiner.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 18 is directed to a method of receiving data comprising: receiving data from a broadcast network (see, e.g., reference numerals 2a, 2b, and 3 in FIGS. 1 and 2, step S3.10 in FIG. 3; page 5, lines 28-32, and page 9, lines 8-11); processing the received data (see, e.g., step

S3.10 in FIG. 3; page 10, lines 5-10); outputting the processed data (see, e.g., step S3.10 in FIG. 3; page 9, lines 9-11); in response to an interruption (see, e.g., step S3.11 in FIG. 3; page 10, lines 15-22), proceeding in a first resource saving mode by continuing to receive data from the broadcast network but not processing and not outputting said received data (see, e.g., step S4.7 in FIG. 4, and step S8.7 in FIG. 8; page 12, lines 1-8, and page 14, lines 28-31; see also page 15, line 28, through page 16, line 4); and proceeding in a second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period (see, e.g., steps S4.9 and S4.10 in FIG. 4, and steps S8.9 and 8.10 in FIG. 8; page 13, lines 15-18, and page 14, lines 30-31), wherein, after operating in said second resource saving mode for a second predetermined time period, an application for outputting the processed data is deactivated (see, e.g., step S8.19 in FIG. 8; page 15, lines 19-20), and wherein the step of receiving data from the broadcast network comprises filtering the received data in order to discard unwanted data (see, e.g., step S3.8 in FIG. 3; original claim 23).

Independent claim 33 is directed to a data receiving device comprising: a receiver arranged to receive data from a broadcast network (see, e.g., reference numerals 2a, 2b, 3, and 9 in FIGS. 1 and 2, step S3.10 in FIG. 3; page 5, lines 28-32, page 6, lines 25-27, and page 9, lines 8-11); at least one processor arranged to process the received data and to cause output of the processed data (see, e.g., step S3.10 in FIG. 3; page 7, lines 10-12, page 9, lines 9-11, and page 10, lines 5-10); and at least one memory including computer program code for one or more programs (see, e.g., reference number 15 in FIG. 2; page 7, lines 10-12), the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following, in response to an interruption (see, e.g., step S3.11 in FIG. 3; page 10, lines 15-22) the data receiving device being arranged to operate in a first resource saving

mode in which the receiver remains active but received data is not processed by the processor and not output (see, e.g., step S4.7 in FIG. 4, and step S8.7 in FIG. 8; page 12, lines 1-8, and page 14, lines 28-31; see also page 15, line 28, through page 16, line 4), and the data receiving device being arranged to operate in a second resource saving mode in which the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period (see, e.g., steps S4.9 and S4.10 in FIG. 4, and steps S8.9 and 8.10 in FIG. 8; page 13, lines 15-18, and page 14, lines 30-31), and the data receiving device being configured to, after operating in said second resource saving mode for a second predetermined time period, deactivate an application configured to output the processed data (see, e.g., step S8.19 in FIG. 8; page 15, lines 19-20), and wherein the receiver comprises a filter configured to extract selected data from the received data for processing and for discarding of unwanted data (see, e.g., step S3.8 in FIG. 3; original claim 23).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 18, 20, 24, 25, 27, 29-33, 35, 38, 39, 42, and 44-49 were rejected under 35 U.S.C. §103(a) as unpatentable over *Engstrom* (U.S. Patent No. 7,065,333) in view of *Dahlin et al.* (U.S. Patent No. 6,122,263) and *Guterman* (U.S. Patent No. 7,062,303).

B. Claims 19, 21, 34 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Engstrom* in view of *Dahlin et al.*, *Guterman*, and *Na et al.* (U.S. Patent 7,031,746).

C. Claims 28 and 43 under 35 U.S.C. §103(a) as being unpatentable over *Engstrom* in view of *Dahlin et al.*, *Guterman*, and *Wakamatsu* (U.S. Pub. No. 2001/0029196).

VII. ARGUMENT

GROUPING OF CLAIMS

For the convenience of the Honorable Board of Patent Appeals and Interferences ("Board"), Appellants do not separately argued the patentability of any of dependent claims 19-21, 24, 25, 27-32, 34-36, 38, 39, and 42-49. Instead, the patentability of these claims stands or falls with their respective independent claims 18 and 33. Accordingly, for purposes of Appeal, Group I includes claims 18-21, 24, 25, 27-32, all standing or falling together with independent claim 18, and Group II includes claims 33-36, 38, 39, and 42-49, all standing or falling together with independent claim 33.

A. THE REJECTION OF CLAIMS 18, 20, 24, 25, 27, 29-33, 35, 38, 39, 42, AND 44-49 UNDER 35 U.S.C. §103 FOR OBVIOUSNESS PREDICATED UPON *ENGSTROM* IN VIEW OF *DAHLIN ET AL.* AND *GUTERMAN*

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision always rests upon the Examiner. *In re Mayne*, 104 F.3d 1339, 41 USPQ2d 1451 (Fed .Cir. 1997); *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992)(see also, MPEP §2141). In rejecting a claim under 35 U.S.C. § 103, the Examiner is required to provide a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

The Administrative Procedures Act (APA) mandates the Patent Office to make the necessary findings and provide an administrative record showing the evidence on which the findings are based, accompanied by the reasoning in reaching its conclusions. See *In re Zurko*,

258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Gartside*, 203 F.3d 1305, 1314, 53 USPQ2d 1769, 1774 (Fed. Cir. 2000). In particular, the Patent Office must articulate and place on the record the "common knowledge" used to negate patentability. *In re Zurko*, *id.*; *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002).

Also, as noted in MPEP §2142, "[t]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made. .... Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. .... However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." MPEP §2141.02 VI. notes that "[a] prior art reference must be considered in its entirety, i.e., as a **whole**, including portions that would lead away from the claimed invention." (Emphasis in original.)

The Appellants submit that the Office Action fails to establish a *prima facie* case of obviousness for the claims as they are set forth herein, since there is no evidentiary support for the conclusion that the features recited in the claims were known at the time of the present invention. Accordingly, the Appellants request that such evidentiary support be placed on the record, or the obviousness rejections withdrawn.

Independent claim 18 recites, among other features, receiving data from a broadcast network; processing the received data; outputting the processed data; in response to an interruption, proceeding in a first resource saving mode by continuing to receive data from the broadcast network but not processing and not outputting said received data; and proceeding in a second resource saving mode in which no data is received from the broadcast network, after

operating in the first resource saving mode for a first predetermined time period, wherein **the step of receiving data from the broadcast network comprises filtering the received data in order to discard unwanted data**. Independent claim 33 recites, among other features, a receiver arranged to receive data from a broadcast network; at least one processor arranged to process the received data and to cause output of the processed data; and at least one memory including computer program code for one or more programs, the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following, in response to an interruption the data receiving device being arranged to operate in a first resource saving mode in which the receiver remains active but received data is not processed by the processor and not output, and the data receiving device being arranged to operate in a second resource saving mode in which the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period, and the data receiving device being configured to, after operating in said second resource saving mode for a second predetermined time period, deactivate an application configured to output the processed data, and wherein **the receiver comprises a filter configured to extract selected data from the received data for processing and for discarding of unwanted data**. The Appellants submit that the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the above limitations of independent claims 18 and 33.

The final Office Action cites *Engstrom* for the teaching of many of the features recited in claims 18 and 33. For example, with regard to the receiving of data from a broadcast network, the processing of the received data, and the outputting of the processed data, the final Office Action cites to tuners (452, 453), audio interface (454) and (speakers, not shown), respectively. Additionally, with regard to the recited filtering of the received data in order to discard unwanted

data, the final Office Action cites the tuners (452, 453) for the teaching of the filtering of received data by asserting that "the tuners 452 and 453 'scan for user preference broadcasts' where the user preferences 'comprise filtering the received data' as a user preference broadcast interrupts another broadcast, in order to discard unwanted (non-user preference broadcasts) data...." (E.g., page 5 of the final Office Action.)

In a previous response, the Appellants argued that the tuners described in *Engstrom* do not filter **received** data, but rather provide a manner in which to select what data is received. For example, an FM tuner as described as an example in *Engstrom*, does not receive data across all (or even a mere plurality of) frequencies of the FM tuner, and then filter out the desired frequency from the received data, but rather can merely select a desired frequency by which to actually receive data. Thus, the Appellants argued, *Engstrom* does not disclose or suggest a step of **receiving data from a broadcast network that comprises filtering the received data in order to discard unwanted data** in the manner recited in claim 18, or a **receiver that comprises a filter configured to extract selected data from the received data for processing and for discarding of unwanted data** in the manner recited in claim 33.

Pages 16-17 of the final Office Action set forth a response to the above arguments in which the Examiner disagreed with this point and asserted the following:

> "... the tuners of Engstrom do receive data of all frequencies. As antenna 450 does not (and can not) perform any tuning or filtering of received signals, *the signals of all the frequencies received by antenna 450 will be input into tuners 452 and 453*. Therefore, the '*received data*' signals input into tuners 452 and 453 *will include both wanted and unwanted data*. The hardware and software applications included in the tuners (which 'filter' by tuning to the user's desired program preferences) will 'extract the selected data' from the received data (by 'tuning to' and processing the users' preferences) and will also 'discard' the unwanted data (by not 'tuning to' and not processing the unwanted data)...." (Emphasis in original.)

The Appellants respectfully submit that the Examiner's assertions are incorrect. While various radio signals at various frequencies may be travelling through the atmosphere at any given time and contacting various objects, such as the antenna (450) of *Engstrom*, the Appellants submit that the antenna (450) by itself is not receiving data in the manner claimed from all of those radio signals, anymore than a rock or a tree or a human or a frog can be considered to be receiving such data from all of those radio signals. Under this interpretation, it logically follows that **any and all objects** can be said to be **receiving data** from all radio signals at various frequencies simultaneously, based solely upon their contact with such radio waves. The Appellants submit that such an interpretation the recited language would clearly not be reasonable to one of ordinary skill in the art. The receipt of the data in *Engstrom* occurs through the operation of the tuners, which are tuned to a particular frequency in order to receive such data via the aid of the antenna. Thus, the Appellants submit that there is no instance in which both wanted and unwanted data is simultaneously received by the antenna/tuner of *Engstrom*, and then unwanted data is filtered out and discarded. No such discarding of received and unwanted data occurs in *Engstrom*. Thus, the Appellants again submit that *Engstrom* does not disclose or suggest a step of **receiving data from a broadcast network that comprises filtering the received data in order to discard unwanted data** in the manner recited in claim 18, or a **receiver that comprises a filter configured to extract selected data from the received data for processing and for discarding of unwanted data** in the manner recited in claim 33.

The Appellants further submit that *Dahlin et al.* and *Guterman* are not cited for and do not disclose or suggest the filtering of received data for processing or for discarding of unwanted data. No such filtering is discussed in either reference.

Accordingly, the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the limitations recited in independent claims 18 and 43. Thus, for at least the above reasons, the Appellants submit that a *prima facie* case of obviousness cannot be established utilizing *Engstrom* in view of *Dahlin et al.* and *Guterman*.

Thus, the Honorable Board is respectfully requested to reverse the rejection of independent claims 18 and 33 under 35 U.S.C. §103. The Appellants do not separately argue the merits of dependent claims 20, 24, 25, 27, and 29-32, but rather, these claims stand or fall with independent claim 18. Also, the Appellants do not separately argue the merits of dependent claims 35, 38, 39, 42, and 44-49, but rather, these claims stand or fall with independent claim 33.

B. THE REJECTION OF CLAIMS 19, 21, 34 AND 36 UNDER 35 U.S.C. §103 FOR OBVIOUSNESS PREDICATED UPON *ENGSTROM* IN VIEW OF *DAHLIN ET AL.*, *GUTERMAN*, AND *NA ET AL.*

Appellants do not separately argue the patentability of dependent claims 19, 21, 34, and 36. Rather, the patentability of claims 19 and 21 stand or fall with independent claim 18, and the patentability of claims 34 and 36 stand or fall with independent claim 33.

C. THE REJECTION OF CLAIMS 28 AND 43 UNDER 35 U.S.C. §103 FOR OBVIOUSNESS PREDICATED UPON *ENGSTROM* IN VIEW OF *DAHLIN ET AL.*, *GUTERMAN*, AND *WAKAMATSU*

Appellants do not separately argue the patentability of dependent claims 28 and 43. Rather, the patentability of claim 28 stands or falls with independent claim 18, and the patentability of claim 43 stands or falls with independent claim 33.

VIII. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellants request the Honorable Board to reverse each of the Examiner's rejections.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

May 9, 2011
Date

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IX. CLAIMS APPENDIX

1. - 17. (Canceled)

18. A method of receiving data comprising:

receiving data from a broadcast network;

processing the received data;

outputting the processed data;

in response to an interruption, proceeding in a first resource saving mode by continuing to receive data from the broadcast network but not processing and not outputting said received data; and

proceeding in a second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period,

wherein, after operating in said second resource saving mode for a second predetermined time period, an application for outputting the processed data is deactivated, and

wherein the step of receiving data from the broadcast network comprises filtering the received data in order to discard unwanted data.

19. A method according to claim 18, wherein, when in said first resource saving mode, received data is discarded.

20. A method according to claim 18, wherein, when in said first resource saving mode, received data is stored.

21. A method according to claim 20, comprising, in the first resource saving mode, discarding data received following the expiry of a predetermined time limit.

22. (Canceled)

23. (Canceled)

24. A method according to claim 18, wherein, after operating in said second resource saving mode for a third predetermined time period, removing a filter arranged to perform said filtering step.

25. A method according to claim 18, wherein, after operating in said second resource saving mode for a fourth predetermined time period, an IP session arranged to handle the output data is closed.

26. (Canceled)

27. A method according to claim 18, wherein the interruption is an activation of an application unrelated to reception of data from the broadcast network.

28. A method according to claim 27, which proceeds in said first resource saving mode in response to a determination that insufficient resources are available for handling reception of data and the unrelated application.

29. A method according to claim 18, comprising displaying a list of services provided over the broadcast network.

30. A method according to claim 29, comprising updating said list of services and displaying an updated list.

31. A method according to claim 18, wherein the step of outputting comprises at least one of: displaying visually displayable data; and outputting audio data.

32. A computer program comprising instructions that, when run on processing means within a data receiving device, causes said data receiving device to perform a method according to claim 18.

33. A data receiving device comprising:

a receiver arranged to receive data from a broadcast network;

at least one processor arranged to process the received data and to cause output of the processed data; and

at least one memory including computer program code for one or more programs,

the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following,

in response to an interruption the data receiving device being arranged to operate in a first resource saving mode in which the receiver remains active but received data is not processed by the processor and not output, and the data receiving device being arranged to operate in a second resource saving mode in which the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period, and the data receiving device being configured to, after operating in said second resource saving mode for a second predetermined time period, deactivate an application configured to output the processed data, and

wherein the receiver comprises a filter configured to extract selected data from the received data for processing and for discarding of unwanted data.

34. A data receiving device according to claim 33, wherein, in said first resource saving mode, the received data is discarded.

35. A data receiving device according to claim 33, wherein, in said first resource saving mode, the received data is stored.

36. A data receiving device according to claim 35, wherein, in the first resource saving mode, data received following the expiry of a predetermined time limit is discarded.

37. (Canceled)

38. A data receiving device according to claim 33, wherein the receiver is configured to deactivate the filter after operating in said second resource saving mode for a third predetermined time period.

39. A data receiving device according to claim 33, wherein the processor is configured to create an IP session for handling the output data, and, after operating in said second resource saving mode for a fourth predetermined time period, to close said IP session.

40. (Canceled)

41. (Canceled)

42. A data receiving device according to claim 33, wherein the interruption is an activation of an application unrelated to reception of data from the broadcast network.

43. A data receiving device according to claim 42, configured to switch to said first resource saving mode in response to a determination that insufficient resources are available for handling reception of data and the unrelated application.

44. A data receiving device according to claim 33, further comprising a telephone transceiver arranged to transmit and receive data via a telecommunications network.

45. A data receiving device according to claim 33, comprising a media guide application to selectively access services provided over broadcast network.

46. A data receiving device according to claim 45, wherein the media guide application is configured to display and update a list of available services on a user interface of the receiving device.

47. A data receiving device according to claim 33, wherein the processed data is output to at least one of a display for outputting visually displayable data; and audio output apparatus.

48. A communication system comprising:

a broadcast network; and

one or more receiving devices according to claim 33.

49. A communication system according to claim 48, comprising:

a bi-directional telecommunications network;

wherein at least one of the one or more receiving devices comprises a telephone transceiver arranged to transmit and receive data via said telecommunications network.

X. EVIDENCE APPENDIX

Appellants are unaware of any evidence that is required to be submitted in the present Evidence Appendix.

XI. RELATED PROCEEDINGS APPENDIX

Appellants are unaware of any related proceedings that are required to be submitted in the present Related Proceedings Appendix.